

Kaburu v. Mukasey, No. 04-74152

NOV 29 2007

McKEOWN, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Although the majority selectively summarizes the facts, under the applicable standard, we are permitted to override the Immigration Judge's factual findings only if "any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4). Here, there is little evidence of a government actor, and no substantial evidence that the government could not or did not control those threatening Kaburu.

A reasonable factfinder could fairly and easily have found the claimed threats and acts were related to Kaburu's performance of her government job, and not because of her political beliefs or on account of another protected ground. See Chanco v. INS, 82 F.3d 298, 302-303 (9th Cir. 1996) (holding that persecution based on being a current member of the military, national police force, or U.S. Embassy guard does not qualify as persecution on a protected ground). The police responded to Kaburu's reports of threats, and she declined to report the incidents to the courts. The mere fact that the police ultimately made no arrest does not compel a finding that the government abdicated its role. See Nahrvani v. Gonzales, 399 F.3d 1148, 1154 (9th Cir. 2005) (upholding BIA finding that police were neither unwilling nor unable to control group where they took reports and investigated, but were unable to solve the crimes). Nothing compels the result reached by the

majority. Under the deferential review required of us, I would deny the petition.